Appl. No. : 09/669,805
Filed : September 26, 2000

REMARKS

Reconsideration and allowance of the above-referenced application respectfully requested

The applicant apologizes for the error in the previously filed Terminal Disclaimer. A new Terminal Disclaimer is submitted herewith. No fee is believed necessary, since a fee was apparently previously paid with the previous terminal disclaimer.

New formal drawings are also submitted herewith, with the proper "replacement sheet" label, in order to obviate the rejection.

Claims 2, 22, 25, 26 and 28 stand rejected under 35 U.S.C. 103 as allegedly being unpatentable over eBay in view of Odom. This contention is respectfully traversed, and it is respectfully suggested that the rejection does not meet the Patent Office's burden of providing a prima facie showing of unpatentability.

EBay teaches the standard technique of eBay proxy bidding. As noted by the rejection, the information is stored on the central server. A submitted bid is sent to that central server. The rejection states that Odom stores certain information on the second computer. However, Odom does not teach the important feature that the amount that is required to overcome the current bids "cannot be viewed by a user of the second computer but which information allows local determination, at the second computer, of whether an entered bid is higher than the current bid amount without contacting said first computer". In fact, Odom teaches that the new minimum bid amount is clearly disclosed to the user. Odom never teaches a secret bid which is maintained secret from the user, but yet allows local determination of the amount of that secret bid, at the second computer.

In Odom, the user can tell what the next bid increment will be. Admittedly, Odom compares the current bid with the bid increment, and as pointed out by the Official Action, avoids unnecessary communications. An unnecessary communication would occur if a bid that is lower then the displayed (not secret) minimum bid were entered. Again, that minimum bid IS DISPLAYED to the user. It is not kept secret as claimed. In contrast, claim 2 requires that the information about the amount required to overcome the current bid cannot be viewed by the user of the local computer, but the determination of whether the bid is high enough, can be made at the local computer.

Considering the scope and contents of the prior art, therefore, what we have is eBay where the information is stored on the central server. The information is secret but remote. We also have Odom where the information is known to everyone. Odom carries out a local determination of whether the entered bid is higher than the publicly known minimum next bid. The information is local, but not secret. Nowhere is there any teaching or suggestion, however, that there is a secret bid amount, and yet the entered bid on the local computer can be locally determined relative to that secret bid amount.

The hypothetical combination of eBay in view of Odom teach an eBay type system, where the system can locally determine if the user's bid is higher than the next publically known bid increment. It teaches nothing about determining at the local computer the amount "that will be required to overcome any current bids on the item" as defined by claim 2. Therefore, claim 2 should be allowable for these reasons.

Claim 22 should be allowable for similar reasons.

Claim 25 requires an icon that allows a bid to be placed without contacting the first computer. That icon enables placing a bid which is high enough to exceed the current maximum. The rejection states that Odom teaches displaying an icon on the other computers. That icon enables placing a bid which is high enough to exceed the current bid. However, that current bid is not necessarily the current maximum, and, moreover, that bid is not SECRET as required by the claims. As stated in column 6, the client may be provided with the current highest bid for the item see column 6 line 31. The system rules in place that allow only pre-determined increments. However, nowhere is there any teaching or suggestion that the bid is actually the current maximum. All that Odom teaches is how to enforce the bidding rules of the type described above. Therefore, claim 25 should be additionally allowable along with the claims that depend therefrom.

Claim 5 is rejected over eBay in view of Odom and further review of Ausubel. Ausubel describes something called an 'English auction', in which the bids are kept secret. Nowhere is there any teaching or suggestion of an agent program that keeps the bid secret until a time of day and date that is specified by the bid itself. Claim 5 requires that the bids are secret until a time of day and date that is specified by the indication associated with the bid. Ausubel's English auction does not meet this limitation. Ausubel's Column 2 describes the different rules that can be used for the bidding system, and how the bid can be how many units, how much money or other expressions. Nowhere, however, is there any teaching or suggestion of the time at which the bid should be released. In fact, this is entirely based on hindsight.

Claims 7 and 24 stand rejected over eBay in view of Brown. This contention is respectfully traversed. First, the rejection attempts to read the first and second portions as though they can be the same portion. While the word comprising is used as the preamble transition, this does not mean that the rest of the claim can be read as having no meaning. The claim requires first hosting the first portion and second posting a second portion. EBay may have an auction similar to the first portion. Brown teaches a system in which under certain circumstances, the changes in the total bid are dynamically displayed to bidders. This is done in the context of a bid pooling system. However, nowhere is there any teaching or suggestion of the first and second portions of the auction, one of which allows the current highest bid to be requested, and the other in which the real-time bids are seen automatically. The fact that the transitional phrase 'comprising' is used, does not change the fact that any rational reading of this claim requires a first and a second portion of the auction, with different auction characteristics. Nowhere has the cited prior art taught or suggested any such first and second portions with different characteristics as claimed. Therefore, claim 7 should be allowable for these reasons.

Claims 7, 23 and 24 stand alternatively rejected over Odom in view of Alaia. This rejection attempts to use the basic system of Odom along with the system described in Alaia's columns 20-23. However, while Alaia does in fact describe a two-part sale, it is not the same kind of two-part auction as claimed. Alaia teaches pre-bids to start the auction, followed by an online auction. The pre-bids are nothing but valid quotations, that start the auction at the amount of the previous bid. While this does show a two-part auction, it does not show an auction divided into portions: a first portion

in which the highest bid can be requested, followed by a second portion in which real-time bids can be placed and seen automatically. The two different sale phases in Alaia does not teach or suggest this feature.

Claims 13-16 stand rejected over eBay in view of Ausubel and Hartman. EBay teaches the basic system of eBay bidding. Page 11 admits that eBay does not teach a quick bid. The rejection alleges that this is taught by Ausubel, drawing attention to column 1 through column 3 line 67 and column 10 line 39 through column 12 line 19. The cited portion in columns 1 through 3 describe how sealed bids can be entered. The bidding may include bidding rules. However, nowhere is there any teaching or suggestion of an amount which automatically exceeds the highest bid. Column 10 beginning at 39 describes how this system could be used to sell shares of stock via an auction. Column 11 lines 15-30 explain what the bidder might enter. The auctioneer might send a new message indicating that they are willing to sell the following shares, but nowhere is there any teaching or suggestion of a quick bid which automatically bids an amount that will exceed the highest bid. Quite simply, Ausubel simply teaches different bidding systems, and not a quick bid that can exceed the current highest bit.

Hartmann teaches one click ordering. This teaches how to order an item which has a fixed price, using a single click. Nowhere is there any teaching or suggestion of how to purchase an auction item analogously using a single click. Since claim 13 is specific to an auction, one having ordinary skill in the art would obtain absolutely no information from Hartman about how to win that bid with a single click. Therefore, claim 13 should be allowable along with the claims that depend therefrom.

Hartmann's one click purchase actually teaches AWAY from a one click auction. Hartmann requires that there is a fixed price sale. Fixed price sale is completely the opposite of auction pricing. The one-click auction defines a completely new paradigm in the auction space – that is that the click determines the price to use in ending the auction, and actually ends the auction. None of the cited prior art, not Hartmann, not Ausubel and not eBay teach how to establish the price for use in a one click auction system.

Moreover, winning an auction in one click goes completely against conventional auction wisdom. An auctioneer in an auction is typically trying to find the highest price possible for the item. In a conventional auction, the end of the auction must be reached to establish that final and highest price. Any auctioneer would know that an auction system is entirely different than a fixed-price sales system. One would not go against conventional auction wisdom by using auction type systems such as described in Ausubel and eBay, with the Hartmann type system of one click buying of a fixed price item.

Therefore, these claims should be additionally allowable. Claim 15 further defines times when bids are made, and again nothing teaches or suggests this feature see above. Claim 16 defines determining both secret bids and nonsecret bids. As described above, this is not taught or suggested by the cited prior art.

Claim 17 requires that "said auction" (which is in claim 16 determining both secret bids and nonsecret bids) requires an extra fee. Woolston clearly does ask for an extra fee for various actions in the auction setting. However, this by itself does not meet the Patent Office's burden of providing a prima facie showing of unpatentability.

Rather, the rejection must show that Woolston teaches paying an extra fee to reveal the secret bids. This is clearly not taught by Woolston, and therefore claim 17 should be additionally allowable.

Claim 18 requires a client that enables sending a bid to a server with a single click that includes an amount of a bid. Nowhere is there any teaching or suggestion of a single click auction system anywhere in the cited prior art. The rejection admits, at page 13, approximately two thirds of the way down, that Odom does not teach the client sending the bid to the server with a single click. Hartman teaches one click ordering of a fixed price item. However, as described above, one click ordering is entirely different than one click auction ending. Ordering requires that the user set a fixed-price, and order it. An auction does not have a fixed price – it allows the market to set the price. Therefore, auction bidding is entirely different than one price selling. Moreover, as described above, those having ordinary skill in the would recognize that the techniques which are used in buying are entirely different than those which would be used in an auction.

Therefore, claim 18 should be allowable along with the claims that depend therefrom.

Claim 29 should be allowable for reasons discussed above, as well as on their own merits.

Claim 18 and others also stand rejected over Ausubel in view of Hartman. Similar to the above, the rejection admits that Ausubel does not disclose client sending the bid to the server with a single click. Therefore, this claim should be additionally allowable.

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

For all of these reasons, it is respectfully suggested that all of the claims should be in condition for allowance. A formal notice of allowance is hence respectfully requested.

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Please charge any fees due in connection with this response, including the one month extension of time, to Deposit Account No. 50-1387.

Respectfully submitted,

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Attachment: Terminal Disclaimer
Drawings